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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/549,783	09/17/2005	Brian Sun	12024-4	7886
42188	7590	07/13/2007	EXAMINER	
DANIEL B. SCHEIN, PH.D., ESQ., INC.			SCRUGGS, ROBERT J	
P. O. BOX 68128			ART UNIT	PAPER NUMBER
Virginia Beach, VA 23471			3723	
MAIL DATE		DELIVERY MODE		
07/13/2007		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/549,783	SUN, BRIAN	
	Examiner	Art Unit	
	Robert Scruggs	3723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 18 April 2007.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 23-43 is/are pending in the application.
 - 4a) Of the above claim(s) 1-22 is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 23-43 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date _____.
- 5) Notice of Informal Patent Application
- 6) Other: _____.

DETAILED ACTION

1. This office action is response to the amendment received on April 18, 2007.

Claims 1-22 have been cancelled therefore claims 23-43 will be fully examined.

Claim Rejections - 35 USC § 103

2. Claims 23-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Warbeg (DE 20219538) in view of Kushner (2003/0126953).

In reference to claim 23, Warbeg discloses a corkscrew comprising: a body (2), the body including a socket adapted to receive the neck of a bottle sealed by a cork; an actuation lever (6); an axially rotatable worm spiral (3) mounted on a carriage (4) within the body and arranged to rotate and penetrate the cork as the lever is lowered, the spiral being further arranged to cease rotation as the lever is raised to withdraw the cork from the bottle, the corkscrew being further arranged to discharge the cork from the spiral by lowering and raising the lever after the neck of the bottle has been removed from the socket and wherein the carriage is mounted for movement between upper and lower positions along one or more guide runners (9) extending longitudinally of the body, a guide member (5) having a guideway (passage or opening), the spiral extending through the guideway, wherein the guideway includes a helical threaded bore adapted to receive the spiral, the examiner believes that this is inherently disclosed since a nut (35) is attached to the bottom end of guide member (5), this nut includes a helical bore that allows the spiral to rotate into the cork and also prevent the spiral from rotating out of the cork, the guideway being adapted to cause the spiral to rotate as the spiral moves

axially through the guide member; first latch means (19) being adapted to releasably engage the guide member to the corkscrew body; and second latch means (14) comprising an elongate plate (23) extending from a lower flange portion, the second latch being adapted to releasably engage the guide member to the carriage, but lacks, a spiral connected to the carriage by a bearing wherein the spiral being rotatable with respect to the bearing. However, Kushner discloses a spiral (10b) connected to a carriage (24) by a bearing (12). The examiner notes that Kushner also teaches the feature of having a threaded bore (26d) in a guide member (26). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the connection between the spiral and the carriage, of Warbeg, with a connection that includes a bearing, in view of Kushner, in order to allow a spiral member to rotate relatively smooth and unhampered.

In reference to claim 24, Warbeg also discloses that the first latch means is actuated by insertion of the neck of the bottle into the socket (Figures 1 and 4).

In reference to claim 25, Warbeg also discloses that the guide member and carriage may move together to withdraw the cork from the bottle (Figure 6).

In reference to claims 26 and 29, Warbeg also discloses that when the bottle is removed from the socket, the first latch moves under action of a spring to an armed position (Figures 1-9).

In reference to claim 27, Warbeg also discloses that the second latch means is actuated by the first latch means (Figure 7).

In reference to claim 28, Warbeg also discloses that when the first latch means is in an armed position the second latch means is opened (Figure 5).

In reference to claim 30, Warbeg also discloses that when the bottle is inserted into the socket the second latch means is urged into an armed position (Figure 4).

In reference to claim 31, Warbeg also discloses one or more resilient members (17).

In reference to claims 32 and 34, Warbeg also discloses that the first latch includes a hook (19) and bottle engaging surface (Figure 5).

In reference to claim 33, Warbeg also discloses that the first latch means extends from an attachment to a lower part thereof to the corkscrew body and includes an upper, downwardly facing restraining surface located to engage a complementary upwardly extending abutment surface of the guide member (Figure 2).

In reference to claim 35, Warbeg also discloses that the guide is located on runners (9) (Figure 2)

In reference to claim 36, Warbeg also discloses that the second lath means is elongate in the longitudinal direction (Figure 4).

In reference to claim 37, Warbeg also discloses that the second latch means is mounted on a pivot (20) (Figure 6).

In reference to claim 38, Warbeg also discloses a lower portion of the second latch means is adapted to engage with a complimentary surface of the first latch means (Figure 7).

In reference to claim 39, Warbeg also discloses that the second latch means includes an aperture for receiving a lug extending out of the carriage (Figure 2).

In reference to claim 40, Warbeg also discloses that the upper end of the socket includes an annular ring having a circular groove dimensioned to receive and engage the neck of the bottle, the annulus of the ring defining a cork receiving passageway having a diameter greater than a cork and the passageway having a length sufficient to allow complete withdrawal of the cork into the passageway as the spiral and cork are withdrawn from the bottle in use (Figures 1-9).

In reference to claims 41-43, Warbeg also discloses gripping means that include arms (10) to carry bottle-engaging pads (inside surface).

Response to Arguments

3. Applicant's arguments with respect to claims 23-43 have been considered but are moot in view of the new ground(s) of rejection.

4. Applicant contends that, **"Warbeg patent application was filed in Germany December 16, 2002, less than one year before the March 19, 2003 priority date of the present application. It is respectfully submitted that the rejection under 35 U.S.C. §102(e) be withdrawn since Warbeg is not an application for patent filed in the United States as required by 35 U.S.C. §102(e). Nevertheless, it is respectfully submitted that even if Warbeg could be cited as prior art, it would not, teach or make obvious the present invention for the following reasons. To facilitate discussion, an English translation of Warbeg is submitted herewith."**

a. The examiner agrees that the Warbeg is not available under 102(e) however Warbeg is available under 102(a) therefore Warbeg is available as an effective prior art reference.

5. Applicant contends that, **"Warbeg does not explain how the upper piston part 4 can move upward while its movement cannot ensue. Again, there is no description of figures Mat explain how the screw rotates."**

b. The examiner respectfully disagrees with this statement. The nut (35) clearly shows that there is a helical bore that allows rotation into the cork and prevents rotation out of the cork. Assuming arguendo, Kushner clearly teaches

this feature as previously mentioned above. Therefore, the examiner believes that the rejection is proper and thus is maintained.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Scruggs whose telephone number is 571-272-8682. The examiner can normally be reached on Monday-Friday, 8:30-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Hail can be reached on 571-272-4485. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



RS

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